



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 47 OF 2014

ALI MWADUNA.....PLAINTIFF

=VERSUS=

MASHA MUKADHA.....DEFENDANT

J U D G M E N T

Introduction:

1. This suit was commenced by way of a Plaint dated 13th March 2014. In the Plaint, the Plaintiff has averred that in a public auction held on 12th June, 1990, which was conducted pursuant to the decree in Malindi SRMCC NO. 8 of 1989, he was declared the winner after bidding for the suit property.
2. After the said purchase, it was averred, the Senior Resident Magistrate issued the Plaintiff with a vesting order; that the High Court issued orders confirming the vesting orders by the Magistrate and that the Defendant has refused to give vacant possession of land known as Kilifi/Ngerenya/331 to the Plaintiff.
3. The Plaintiff is seeking for eviction orders.
4. Although the Defendant was served with the Plaint and Summons to Enter Appearance, he did not file a Defence. The matter proceeded for formal proof on 11th September 2014.
5. The Plaintiff, PW1, informed the court that he bought the suit property in a public auction in 1990. The Plaintiff produced the original receipt for Kshs.68,500 showing that he paid for the suit property in the auction. The Plaintiff also produced a copy of the vesting order in Malindi SPMCC No.8 of 1989 and the order of Mbogholi J in Mombasa Misc. App. Number 174 of 1994.
6. I have perused the exhibits. The receipt dated 19th June 1990 shows that the Plaintiff purchased the suit property in a public auction and paid to Shariff Alwi Ahmed Auctioneers Kshs.68,500/-
7. The sale of the suit property by way of a public auction was pursuant to an order of the court in Malindi CMCC No. 8 of 1989.
8. After the sale, the Magistrate issued a vesting order dated 29th June 1990 in the following terms:

“That all that piece of land plot number 331 situated at Ngerenya be vested in terms of the

certificate of sale issued by this court dated 28th June, 1990.”

9. The said vesting order was confirmed by the High Court in Mombasa Misc. Civil Application Number 174 of 1994.

10. It would appear that the Defendant refused to move out of the suit property despite the orders that were issued by the lower court and the High Court.

11. In view of the fact that the Defendant has never set aside the orders of the lower court and High court, I find that the Plaintiff has proved his case on a balance of probabilities.

12. In the circumstances, I allow the Plaintiff's Plaint dated 13th March, 2014 in the following terms.

(a) The Defendant, his agents and servants be and are hereby evicted from land known as Kilifi/Ngerenya 331.

(b) The County Police Officer to enforce this order.

(c) The Defendant to pay the costs of the suit.

Dated and delivered in Malindi this 17th day of **October**, 2014.

O. A. Angote

Judg